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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,131	03/27/2001	Shlomo Ovadia	42390P11290	3814

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EXAMINER

LAYE, JADE O

ART UNIT PAPER NUMBER

2617

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/819,131

Applicant(s)

OVADIA, SHLOMO

Examiner

Jade O. Laye

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-27.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached response.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Jade O. Laye
Junior Examiner
AU 2617

Advisory Action

Response to Arguments

1. Applicant's arguments filed 8/2/05 have been fully considered, however, they are found unpersuasive. Below, the Examiner will outline the basis for this opinion.

In general, Applicant argues that "*Shahar* does not teach [the] use of pilot signals to identify (i.e., distinguish) data channels, nor would there be any motivation to combine the teachings of *Roeck* and *Shahar* with respect to claim 1 or any other pending claims or any expectation of success." (Response, Pg. 9). The Examiner disagrees because *Shahar* does in fact teach the use of a pilot tone to identify data channels and there is a clear motivation to combine.

Shahar utilizes a pilot tone to detect (i.e., identify) a specific data carrier. Applicant's Claim 1 is directed to a method for identifying data channels and utilizes a pilot tone to do so. *Shahar* utilizes a pilot tone to enable the system to locate (i.e., detect and/or identify) a data channel. Although Applicant may be correct in arguing that all the channels of *Shahar* are data channels, this conclusion would be immaterial. Regardless of whether all channels are data channels or some are data and others voice, *Shahar*'s system still utilizes the pilot signal to lock onto the specified carrier, or to locate the specified channel. Moreover, even Applicant himself agrees, "the pilot signal is used to lock on to a channel..." (Response, Pg. 13). Accordingly, the Examiner maintains his previous position.

The systems of *Roeck* and *Shahar* are analogous arts. Applicant appears to argue that *Roeck* and *Shahar* are incompatible because one is directed toward wired communications, while

the other is wireless and therefore, cannot be combined under a 103 analysis. In support, Applicant further argues that *Shahar* employs a “totally different” modulation scheme than *Roeck*. (Response, Pg. 11-12). These arguments are found unpersuasive for a number of reasons. First, each system applies to telecommunications and as discussed in the previous Final Action, the use of pilot tones in locating channels is well known in this art. Second, each system applies some form of QAM modulation. Third, each system is directed toward a method of channel identification and location. *Roeck*, on one hand, achieves this objective by performing two matches between the carrier and certain modulation schemes. In contrast, *Shahar* achieves this objective via the use of a method which utilizes a pilot tone sent on the specified carrier. Accordingly, the systems of *Roeck* and *Shahar* are analogous arts.

The motivation to combine *Roeck* and *Shahar* is clear. On page 14 of the Response, Applicant argues that since *Roeck* already employs a scheme to solve the data channel identification problem, there would be no advantage to using *Shahar*’s pilot tone to accomplish the same. This argument falls far short of being persuasive. It is clear *Roeck*’s invention is one method of solving the channel identification problem. However, upon employing *Shahar*’s pilot tone, *Roeck*’s system could be faster and/or, at the least, would provide an alternative method of solving said problem. In general, the underlying basis for combining references is typically to form a system which accomplishes a similar objective via a different method. Moreover, to the Examiner’s knowledge, a successful analysis under 103 does not require an “advantage” or improvement, as suggested by Applicant. As discussed in the previous Final Action, the motivation to combine is clear: the transmission of the pilot tone enables fast and robust carrier identification.

2. Applicant also argues a number of other points regarding claim interpretation. Each will be addressed below.

Applicant's claimed invention is not limited to wired cable systems. In Applicant's response, he seems to argue that the claimed invention is only directed toward wired cable systems. However, Claim 1 is broad enough to encompass both wired and wireless systems. Accordingly, this argument is unpersuasive.

Applicant's claims are not limited to identifying channels as apart from non-data channels. To the contrary, Applicant's claims are directed toward identifying data channels in a cable broadband system. There is nothing in Applicant's claims which defines said broadband signal as containing both data and multimedia channels. Accordingly, this argument is unpersuasive.

3. Based upon the before mentioned arguments, the Examiner maintains the Final Office Action mailed 6/2/05 was proper.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jade O. Laye whose telephone number is (571) 272-7303. The examiner can normally be reached on Mon. 7:30am-4, Tues. 7:30-2, W-Fri. 7:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner: Jade O. Laye
September 1, 2005.



NGOC-YEN VU
PRIMARY EXAMINER